A PERSPECTIVE ON REDUCTION OF SHARE CAPITAL UNDER NCLT

• INTRODUCTION:

Reduction is the process of reducing the share capital of the company. Under the Companies Act, 2013 the reduction of share capital is allowed only by following stringent condition to ensure that share capital is not reduced by the company to the prejudice of the creditors. However, there are certain exceptions where the capital can be reduced without following the process as specified in Section 66 of the Companies Act, 2013. On 7th December, the Ministry of Corporate Affairs issued a notification wherein Section 66 for reduction of share capital was notified. Reduction of Share Capital is mainly done to eliminate loss and increase the value of the shareholder.

• WHY REDUCTION OF SHARE CAPITAL?

A reduction of share capital has a positive effect on the distributable reserves of a company. It creates a reserve which is treated as a profit for accounting purposes. Companies usually opt for reduction of share capital for reducing excess capital, writing off the losses and the company is given freedom to reduce the share capital in any manner. In case of buy back of share all the shareholders will not be benefited uniformly.

• WHAT IS THE LIKELY IMPACT ON THE SHARE PRICE?

Share Price is a reflection of the Company's business performance, future prospects and attractive returns and it also depends upon the supply-demand factors in the market.

• OVERVIEW ON REDUCTION OF SHARE CAPITAL:

Under the Companies Act, 1956, there were two procedures for reduction of share capital i.e. with the approval of High Court and without the approval of the High Court (diminution of share capital). In case of diminution of share capital, the old act provided a long and cumbersome procedure, which also includes considering the objection of the creditors. However, in the Companies Act, 2013 there is only one procedure for reduction of share capital.

Under the old act, after the High Court Order the reduction is filed with Registrar of Companies and ROC gives a certificate of registration which acts as a conclusive evidence that all requirements under the act has been complied with. However, under the new act certificate issued by the Registrar of Companies is not a
conclusive proof and there is a possibility of questioning the reduction if the same is not done as per the requirements of the act.

The Companies Act, 2013 required the company to add the word ‘and reduced’ to the Companies name. This provision has been dispensed with in the new act but the same has been provided in the NCLT rules.

**PROVISIONS OF COMPANIES ACT:**

**Confirmation of the Tribunal:**

Upon the confirmation of the Tribunal on an application made by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital by altering the Memorandum of Association in the following ways:

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid up

For example: If a share of a company is having face value of INR 100 each of which INR 75 is fully paid up, the company may reduce its share capital to INR 75 fully paid up and relieve the shareholder from the liability of uncalled share capital.

Or

(b) either with or without extinguishing or reducing liability on any of its shares,

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets;

For example, if the shares of face value of INR 100 each fully paid-up which is represented by INR 75 worth of assets. In such a case, reduction of share capital may be effected by cancelling INR 25 per share and writing off similar amount of assets.

Or

(ii) pay off any paid-up share capital which is in excess of the wants of the company

For example, shares of face value of INR 100 each fully paid-up can be reduced to face value of INR 75 each by paying back INR 25 per share. The company may call for the amount of shares paid off by them in near future.

Paid-up share capital for the purpose of capital reduction would include securities premium and capital redemption reserve.

**Tribunal Notice:**

The Tribunal shall give notice of every application made to it to:
• Central Government;
• Registrar of Companies;
• Securities and Exchange Board, in the case of listed companies
• Creditors of the company

The Tribunal shall consider any representation made to it within three months from the date of receipt notice. If no representation has been received within the said period, it shall be presumed that they have no objection to the reduction.

**Confirmation of Reduction of Share Capital:**

The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company’s auditor has been filed with the Tribunal.

**Publication of the Tribunal Order:**

The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

**Deliver a copy of order of Tribunal to Registrar:**

The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

**Non Applicability of Reduction of Capital:**

The provisions of reduction of share capital shall not apply to buy-back of its own securities by a company under section 68.

**Liabilities of Members:**

On reduction of share capital, the extent of liabilities of any member shall not exceed the difference of the amount paid thereon or deemed to have been paid thereon and amount fixed by the scheme of reduction.
If, any creditor entitled to object to the reduction of share capital is not entered in the list of creditors because of ignorance, and after reduction of share capital, company is unable to pay his debt or claim, then every member at the time of registration of order will be liable to contribute for the payment of debt to the creditor.

**Penalty:**

If any officer of the company
(a) knowingly conceals the name of any creditor entitled to object to the reduction;
(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

If a company fails to comply with the provisions, it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

• **WHO CAN REDUCE ITS SHARE CAPITAL:**

The following company can reduce its share capital:

a. A company having share capital
b. A company limited by guarantee and having share capital.

• **APPLICABILITY OF REDUCTION OF SHARE CAPITAL:**

1. Reemption of preference shares under section 55 of the Companies Act, 2013 shall not be considered as reduction of share capital.
2. Cancellation of unissued share capital shall not deem to be reduction of share capital as it is cancelation of authorised share capital which has not been issued or taken up by any party.

• **PROCEDURE FOR REDUCTION OF SHARE CAPITAL:**
Convene a Board Meeting to approve the reduction of share capital and fixing the date of general meeting of the company.

Hold the general meeting and pass Special Resolution.

File MGT-14 with ROC within 30 days of passing of Special Resolution.

Apply to NCLT by filing an application in Form RSC-1 along with prescribed fee of Rs.5,000/- to confirm reduction

The company shall be accompanied with:
- List of Creditors, Certificate of auditor to the effect that the list of creditors are correct,
- Certificate by auditor and declaration by the directors that there are no arrears in
  repayment of deposits or interest and certificate by auditor that the accounting
  treatment are in line with the accounting standards and other provisions of the act.

The NCLT shall within 15 days of submission of the application give a notice to ROC and
SEBI in Form RSC-2 and to every creditors of the company in Form RSC-3.

The NCLT shall also give direction for the notice to be published in Form RSC-4
within seven days of such direction in a leading English and vernacular
language newspaper and for uploading on the website of the company.

The company shall file an affidavit in Form RSC-5 confirming the dispatch
and publication of the notice within seven days from the date of issue of
such notice.

The NCLT may dispense with the requirement of giving notice to the creditors or publication of
notice, if every creditor has been discharged or secured or given his consent.

Representation made by ROC, SEBI and creditors shall be sent to NCLT within 3
months of receipt of notice and copy of which shall also be sent to the company. If
no such representation has been received by NCLT within the said period, it shall
be presumed that they have no objection.

Company shall send the representation or objections so received along with
responses of the company thereto within 7 days of expiry of period upto which
objections were sought.

The order confirming the reduction of share capital shall be in Form RSC-6.

The company shall deliver a certified copy of the order of the NCLT under sub-section (3)
and of minute approved by the Tribunal to the ROC and file E-form INC-28. within 30 days
of the receipt of order.

The ROC shall issue a certificate to that effect in Form RSC-7

**COMPARISON OF REDUCTION OF SHARE CAPITAL WITH THE NEW ACT:**
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<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Remarks</th>
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<tbody>
<tr>
<td>1.</td>
<td>Manner of Reduction</td>
<td>Under the new act, there is no need to have any authorisation in the Articles of Association for reduction of share capital.</td>
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<td>There is a new pre-requisite that is no reduction shall take place if the company is in arrears in repayment of deposit and interest thereon.</td>
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<td>2.</td>
<td>Application to be made to various authorities</td>
<td>This provision has been newly introduced in order to safeguard the interest of the government</td>
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<td>3.</td>
<td>Consideration by the Tribunal before passing the order</td>
<td>The company for the purpose of reduction of share capital should comply with the accounting standards and certificate for the same needs to be issued by the auditor to the Tribunal</td>
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<td>4.</td>
<td>Order on application and minute</td>
<td>The Tribunal makes order confirming the reduction of share capital in Form No. RSC – 6 and a certificate is issued by the ROC in FormNo. RSC–7.</td>
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<td>Under the new act the hassle of getting the minutes approved does not arise.</td>
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<td>5.</td>
<td>Advertisement of reasons for Reduction of Share Capital</td>
<td>The provision of advertising the reason for reduction of share capital under the new act has been dispensed off.</td>
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<td>6.</td>
<td>When order confirming the Tribunal shall take effect</td>
<td>No time period has been provided when reduction shall take effect. Thus, it will take effect from the date order has been passed by the Tribunal allowing reduction.</td>
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<td>7.</td>
<td>Alteration of Memorandum of Association</td>
<td>The company which was required to seek order from the Tribunal for altering the memorandum of association has been done away with.</td>
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**HOW DO WE HELP?**

We as professionals ensure that all the compliances with respect convening boards and shareholders meeting as per the Companies act, 2013 and secretarial standard are done. We do liaising with the National Company Law Tribunal, Registrar of Companies, Stock Exchanges and various corporate bodies in order to ensure that the procedure is followed as per the law and there aren’t any non-compliances with regards to the process of reduction.

**CONCLUSIONS:**
In order to be in consonance with the nature of corporate litigation, the Companies Act and the NCLT has simplified the procedure for reduction of share capital. Measures are taken by the NCLT to bring about transparency in reduction of shares capital. However, section 66 has not contemplated any new method for reduction of share capital. Instances where the company can reduce its share capital without following the procedure specified under section 66. For example, In case of deregistration of company NCLT may order for purchase of shares of the company

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